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12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION
14

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17 JEFFREY NYKERK, MICHAEL PAWSON,
STACEY RODGERS, and MARC
18 SCHAEFER, individually and on behalf of all
others similarly situated,
19

20 Plaintiff,

21 v.

22 APPLE INC., a California corporation,

23 Defendant.
24
25
26
27
28

Case No. 5:24-cv-07588-NW

**DEFENDANT APPLE INC.'S NOTICE
OF MOTION AND MOTION TO
DISMISS PLAINTIFFS' FIRST
AMENDED CLASS ACTION
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: August 6, 2025
Time: 9:00 a.m.
Dept.: Courtroom 3 – 5th Floor
Judge: Hon. Noël Wise

FAC Filed: February 6, 2025

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NOTICE OF MOTION AND MOTION TO DISMISS

PLEASE TAKE NOTICE that on August 6, 2025 at 9:00 a.m., or as soon thereafter as the motion may be heard in Courtroom 3 on the 5th Floor of the United States Courthouse, 280 South First Street, San Jose, California, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, defendant Apple Inc. (“Apple”) will and hereby does move to dismiss the following claims asserted in plaintiffs Jerry Mitchell Adair, David Ambrozic, Philip Camacho, Daniel Kadyrov, Lindsey LaBella, Jeffrey Nykerk, Michael Pawson, Stacey Rodgers, and Marc Schaefer’s (“Plaintiffs”) First Amended Class Action Complaint filed in this Court on February 6, 2025 (ECF No. 39): Plaintiffs’ claims for breach of express and implied warranties (Causes of Action 5-6, 11-12, 14-15, 17-18, 20-21, 23-24, 26-27); Plaintiff Camacho’s Song Beverly Consumer Warranty Act claim (Cause of Action 7); Plaintiffs Adair, Ambrozic, Kadyrov, LaBella, Nykerk, Rodgers, and Schaefer’s consumer protection claims based on any alleged Apple omissions (Causes of Action 8-10, 13, 16, 19, 22, and 25); Plaintiffs LaBella, Pawson, and Rodgers’ consumer protection claims in their entirety (Causes of Action 22, 25, and 28); Plaintiffs’ unjust enrichment claim (Cause of Action 4), and Plaintiffs’ claims under the consumer protection statutes and warranty laws of all 50 states (Causes of Action 1-3). This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Claudia Vetesi filed herewith, Apple’s Request for Judicial Notice, and the pleadings and evidence on file in this matter, oral arguments of counsel, and such other materials and arguments as may be presented in connection with the hearing on the Motion.

Dated: March 28, 2025

MORRISON & FOERSTER LLP

By: /s/ Claudia M. Vetesi
CLAUDIA M. VETESI

Attorneys for Defendant
APPLE INC.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The First Amended Complaint (“FAC”) adds six additional plaintiffs from four states and asserts an additional 14 claims. While Plaintiffs have added to their story, their claims continue to suffer from the same core flaws. Plaintiffs seek to assert breach of warranty and consumer fraud claims based on “sound issues” they claim to have experienced with their AirPods Pro 1. But seven of nine Plaintiffs do not allege experiencing any sound issues with their AirPods Pro 1 during the one-year warranty period and, indeed, many concede that they used their devices for well beyond that period, apparently without incident. While the two remaining Plaintiffs (Pawson and Camacho) claim they experienced sound issues within the warranty period, their claims fare no better because they each admit they received free replacements from Apple that they used for years after their initial purchase date. At bottom, Plaintiffs here each received what they bargained for. Their claims to the contrary are meritless.

Plaintiffs’ express warranty claims are governed by Apple’s One-Year Limited Hardware Accessory Warranty (“Limited Warranty”), but those claims fail at the outset for the seven Plaintiffs who do not allege that they experienced any sound issues during the Limited Warranty period. The only two Plaintiffs who claim to have experienced sound issues during the Limited Warranty period each received free replacements from Apple and cannot claim any warranty breach occurred. Plaintiffs’ novel theory that the Limited Warranty does not apply because it excludes design defects from coverage is wrong as a matter of law. Plaintiffs cannot show their AirPods Pro 1 were not fit for their ordinary use (as is required to state a claim for breach of the implied warranty of merchantability) or that they were purchased for a particular purpose other than their ordinary use (as required to state a claim for breach of the implied warranty of fitness for a particular purpose), so plaintiffs’ implied warranty claims both fail.

Plaintiffs’ consumer protection claims are equally flawed. Plaintiffs LaBella and Rodgers, who assert claims sounding in fraud, do not come close to satisfying the heightened pleading requirements of Rule 9(b). The seven remaining Plaintiffs who admit that they did not experience any sound issues during the Limited Warranty period fail to allege that Apple owed them any

1 duty to disclose potential sound issues, dooming their omissions claims too. Indeed, where an
 2 alleged defect manifests only after the warranty period has expired, a defendant's duty to disclose
 3 applies only if the defect poses an unreasonable safety risk. Here, these Plaintiffs do not even
 4 attempt to allege any safety issue as required to trigger any disclosure duty beyond the Limited
 5 Warranty period. Further, because Pawson claims that he first experienced alleged sound issues
 6 more than two years before this action commenced, his consumer protection claim under Texas
 7 law is time-barred.

8 Plaintiffs' remaining claims also fail at the outset. Plaintiffs cannot state a claim for
 9 unjust enrichment because their rights are governed by an express contract (the Limited
 10 Warranty), and because their allegations make clear they each received the benefit of their
 11 bargain. Nor do Plaintiffs allege sufficient facts to justify any injunctive relief here where they do
 12 not allege likelihood of future injury. Finally, Plaintiffs' conclusory claims under the consumer
 13 protection statutes and warranty laws of all other states fail to meet the basic pleading standard of
 14 Rule 8, let alone the heightened standard required under Rule 9(b).

15 **II. FACTUAL BACKGROUND**

16 **A. Apple's One Year Limited Warranty for AirPods and the AirPods Pro 1** 17 **Service Program Applies to Plaintiffs' Purchases**

18 The AirPods Pro 1 are subject to Apple's Limited Warranty. The Limited Warranty
 19 warrants against "defects in materials and workmanship" for a one year period "from the date of
 20 original retail purchase[.]" (Declaration of Claudia M. Vetesi in Support of Apple's Motion to
 21 Dismiss Plaintiffs' First Amended Class Action Complaint ("Vetesi Decl."), ¶¶ 2-4, Exs. A-C.)
 22 The Limited Warranty further provides that "if a defect arises during the Warranty Period," Apple
 23 has the option to (i) repair the product, (ii) to replace the product, or (iii) to refund the original
 24 purchase price. (*Id.*)

25 After determining "that a small percentage of AirPods Pro may experience sound issues,"
 26 Apple launched the AirPods Pro Service Program for Sound Issues (the "Service Program") in
 27 October 2020 for "[a]ffected units manufactured before October 2020." (Vetesi Decl. ¶ 5, Ex. D.)
 28 The Service Program addressed the "small percentage" of affected AirPods Pro 1 that exhibit

1 either “[c]rackling or static sounds that increase in loud environments, with exercise or while
 2 talking on the phone” or “Active Noise Cancellation not working as expected, such as a loss of
 3 bass sound, or an increase in background sounds, such as street or airplane noise[.]” (*Id.*)
 4 Through the Service Program, users with affected units could obtain service “free of charge” and
 5 could obtain a replacement for AirPods with a “confirmed issue[.]” (*Id.*) The Service Program
 6 covered “affected AirPods Pro for 3 years after the first retail sale of the unit.” (*Id.*)¹

7 **B. Seven Plaintiffs Do Not Allege That They Experienced Any Issues with Their**
 8 **AirPods Pro 1 During the Warranty Period**

9 By their own allegations, seven of nine Plaintiffs used their AirPods Pro 1 without issue
 10 for the full one-year Limited Warranty period and, in many cases, well beyond.

11 **Adair.** Adair alleges he purchased his AirPods Pro 1 “[o]n or about June 16, 2021[.]”
 12 (FAC ¶ 143.) Adair does not allege experiencing any issues with his AirPods Pro 1 until an
 13 unspecified date during “the summer of 2022,” when he allegedly experienced sound issues with
 14 his right bud. (*Id.* ¶ 152.) However, Adair concedes he continued to use his AirPods Pro 1 until
 15 November 11, 2022, when he received a free replacement pair from Apple. (*Id.* ¶ 154.) Adair
 16 claims he then experienced sound issues with his replacement AirPods Pro 1, but continued to use
 17 them for another two years until he reported the issue to Apple “[o]n or about November 26,
 18 2024[.]” (*Id.* ¶ 157.)

19 **Ambrozic.** Plaintiff Ambrozic alleges he purchased his AirPods Pro 1 “[o]n or about
 20 August 31, 2021[.]” (*Id.* ¶ 127.) Ambrozic alleges he first experienced sound issues “[o]ver a
 21 year following his initial purchase,” and that he purchased a replacement left bud. (*Id.* ¶ 136.)
 22 Ambrozic claims he experienced sound issues with his AirPods Pro 1 and reported the issue to
 23 Apple on February 16, 2023. (*Id.* ¶ 139.)

24 **Kadyrov.** Kadyrov alleges he purchased his AirPods Pro 1 “[o]n or about November 27,
 25 2021[.]” (*Id.* ¶ 159.) Kadyrov claims he experienced sound issues with his AirPods Pro 1 but
 26 does not specify when any such issues began. Instead, he alleges only that he received a free

27 ¹ The Service Program did not extend the standard warranty coverage of the AirPods Pro
 28 1. (Vetesi Decl. Ex. D.)

1 replacement from Apple “[o]n or about March 2023”—approximately a year and a half after his
 2 initial purchase date. (*Id.* ¶ 167.) While Kadyrov claims he experienced sound issues with his
 3 replacement AirPods Pro 1 “[s]hortly after” their receipt, he continued to use his AirPods Pro 1
 4 until he reported the issue to Apple “[o]n or about December 1, 2024[.]” (*Id.* ¶¶ 169-70.)

5 **LaBella.** LaBella alleges she purchased her AirPods Pro 1 “[o]n or about April 24, 2020”
 6 after viewing a “commercial” touting the device’s noise cancelling features, “high-quality audio”
 7 and “immersive sound experience.” (*Id.* ¶¶ 182-83.) LaBella alleges she experienced sound
 8 issues “[j]ust over a year following her purchase[.]” (*Id.* ¶ 187.) Yet, she did not contact Apple
 9 about her alleged issues, and she continued to use her AirPods Pro 1 until May 16, 2024—three
 10 years after she allegedly first experienced the issue and more than four years after her purchase
 11 date. (*Id.* ¶ 189.)

12 **Nykerk.** Nykerk alleges he purchased his AirPods Pro 1 “[o]n or about March 12,
 13 2022[.]” (*Id.* ¶ 113.) Like Kadyrov, Nykerk alleges he experienced sound issues with his
 14 AirPods Pro 1 but does not allege specifically when any such issues began. Instead, he alleges
 15 only that he reported his issues to Apple “[o]n or about December 23, 2024,” more than two and a
 16 half years after his purchase date. (*Id.* ¶ 125.)

17 **Rodgers.** Rodgers claims to have purchased her AirPods Pro 1 “[o]n or about July 24,
 18 2021,” but, unlike any other Plaintiff, she does not allege she was exposed to or relied on any
 19 representation concerning the AirPods Pro 1 before making her purchase. (*Id.* ¶¶ 172-73.)
 20 Rodgers claims she first experienced sound issues on September 1, 2023, after more than two
 21 years of use. (*Id.* ¶ 177.) Notably, moreover, Rodgers waited to contact Apple about her alleged
 22 sound issues (and continued to use her AirPods Pro 1) until “[o]n or about November 4, 2023[.]”
 23 (*Id.* ¶ 179.)

24 **Schaefer.** Schaefer alleges he purchased his AirPods Pro 1 “[o]n or about” March 24,
 25 2020[.] (*Id.* ¶ 96.) He claims he first experienced issues with his AirPods Pro 1 “about one year
 26 after his purchase.” (*Id.* ¶ 106.) Schaefer claims he contacted Apple about the issue in June 2021
 27 and received free replacement AirPods Pro 1. (*Id.* ¶ 107.) Schaefer then used his replacement
 28 AirPods Pro 1 for nearly two years before he received another free replacement “on or about

1 April 4, 2023[.]” (*Id.* ¶ 109.) Schaefer claims he then used his second replacement for more than
 2 one and a half years before experiencing sound issues “in or about late 2024[.]” (*Id.* ¶ 110.)

3 **C. The Remaining Two Plaintiffs Each Received Free Replacement AirPods Pro**
 4 **1 and Used their Devices for Several Years**

5 **Camacho.** Camacho purchased his AirPods Pro 1 in Illinois “[o]n or about March 27,
 6 2020[.]” (*Id.* ¶ 80.) While he alleges first experiencing sound issues “three months after his
 7 purchase,” he continued to use his AirPods Pro 1 for more than two years after his purchase, until
 8 “on or around August 2022.” (*Id.* ¶¶ 88-89.) Camacho alleges Apple replaced his AirPods Pro 1
 9 for free in August 2022, and that at some unspecified point, he began experiencing sound issues
 10 with his replacement AirPods Pro 1. (*Id.* ¶¶ 92-93.) Despite the claimed sound issues, Camacho
 11 concedes he continued to use his replacement AirPods Pro 1 until November 20, 2024—more
 12 than four and a half years after his initial purchase date. (*Id.* ¶ 94.)

13 **Pawson.** Pawson purchased his AirPods Pro 1 “[o]n or about November 25, 2019[.]” (*Id.*
 14 ¶ 191.) He alleges that he first experienced sound issues with his device “just under one year
 15 following his purchase,” and that Apple replaced his right bud—at no cost to him—sometime
 16 after November 25, 2019. (*Id.* ¶¶ 200-01.) Pawson alleges that in January 2021 he experienced
 17 sound issues with his left bud and that Apple replaced that for free as well. (*Id.* ¶ 202.) Pawson
 18 alleges he then used his replacement AirPods Pro 1 for almost another three years (four years
 19 after the original purchase) before he purportedly experienced sound issues again “[o]n or about
 20 November 2023[.]” (*Id.* ¶ 203.) Pawson alleges that he then contacted Apple about his sound
 21 issues in December 2023—more than four years after his initial purchase date. (*Id.* ¶ 205.)

22 **III. LEGAL STANDARD**

23 A complaint must be dismissed for failure to state a claim under Rule 12(b)(6) of the
 24 Federal Rules of Civil Procedure if the plaintiff fails to allege “enough facts to state a claim to
 25 relief that is plausible on its face.” *See* Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550
 26 U.S. 544, 562-63, 570 (2007). While courts must accept the Complaint’s specific factual
 27 allegations as true, courts need not accept “[t]hreadbare recitals of the elements of a cause of
 28 action, supported by mere conclusory statements[.]” *Aberin v. Am. Honda Motor Co.*, No. 16-

CV-04384-JST, 2018 WL 1473085, at *2 (N.D. Cal. Mar. 26, 2018) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). A pleading that offers “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do.” *Ashcroft*, 556 U.S. at 678.

Claims grounded in fraud are subject to the heightened pleading requirements of Rule 9(b). *Moore v. Apple, Inc.*, 73 F. Supp. 3d 1191, 1198 (N.D. Cal. 2014). Rule 9(b) requires that a claim grounded in fraud “state with particularity the circumstances constituting fraud[.]” *Aberin*, 2018 WL 1473085, at *3 (citing Fed. R. Civ. P. 9(b)). To satisfy this heightened standard, the plaintiff must allege “an account of the time, place, and specific content of any false representations as well as the identities of the parties to the misrepresentations.” *Moore*, 73 F. Supp. 3d at 1198 (internal citation omitted).

IV. ARGUMENT

A. Plaintiffs’ Warranty Claims Fail on Multiple Grounds

Plaintiffs’ express warranty claims are barred because they (i) cannot dispute that the Limited Warranty applies, and (ii) fail to allege facts sufficient to establish a breach during the term of the Limited Warranty. Further, Plaintiffs do not allege facts sufficient to plead breach of any implied warranty, nor can they.

1. Apple’s Limited Warranty Governs and Bars Plaintiffs’ Warranty Claims, Even if Based on an Alleged Design Defect

Plaintiffs try to avoid application of Apple’s Limited Warranty by claiming that it does not apply here because their claims involve an alleged “design defect” and not an issue with “materials and workmanship covered by” the Limited Warranty. (FAC ¶¶ 75-78.) Not so. The Limited Warranty’s *coverage* here is limited to “defects in materials and workmanship.” (Vetesi Decl. ¶¶ 2-4, Exs. A-C.) That is, to the extent a user alleges an issue stemming from product’s design as opposed to from “materials and workmanship,” that issue would be excluded from coverage under the Limited Warranty. But courts in this District have made clear that the terms—including the duration—of the of the Limited Warranty *apply* even in cases where the factual basis of plaintiffs’ issues means they are not eligible for *coverage* under the warranty. *See In re Apple Inc. Device Performance Litig.*, 347 F. Supp. 3d 434, 462-63 (N.D. Cal. 2018)

(applying Apple’s one-year warranty period to claims premised on purported battery defect even though, as here, Apple’s Limited Warranty expressly excluded batteries from warranty coverage unless the battery failure “occurred due to a defect in materials or workmanship”). Thus, the fact that a claim might be *excluded* from the Limited Warranty’s terms does not mean that the Limited Warranty does not otherwise *apply* to the purchase. Any other interpretation is at odds with the reasoned decisions of multiple courts in this District and would render a manufacturer’s limitations or exclusions in an express warranty meaningless; that is not the law.

Apple’s Limited Warranty applies and bars Plaintiffs’ claims.

2. Plaintiffs’ Express Warranty Claims Fail Because No Plaintiff Alleges a Breach During the Warranty Period

Plaintiffs’ express warranty claims fail as a matter of law for one simple reason: no Plaintiff alleges that Apple breached the Limited Warranty during the one-year Limited Warranty period, which is the only basis for such a claim.

The express warranty claims asserted by Schaefer, Nykerk, Ambrozic, Adair, Kadyrov, LaBella, and Rodgers each share the same fundamental defect: their allegations make clear that their devices functioned without issue for the full duration of the Limited Warranty, and they do not allege they sought or were denied coverage at any relevant time.

Adair purchased his AirPods Pro 1 “[o]n or about June 16, 2021,” and did not contact Apple concerning any purported “sound issues” with his device until an unspecified date in “the summer of 2022.” (FAC ¶¶ 143, 152.) Kadyrov does not even allege when he first experienced any sound issues and alleges only that he received a free replacement from Apple more than 15 months after his initial purchase date. (*Id.* ¶¶ 159, 167.) Accordingly, neither Adair nor Kadyrov can state a claim for breach of express warranty claim under New York law. *Meserole v. Sony Corp. of Am., Inc.*, No. 08 Cv. 8987 (RPP), 2009 WL 1403933, at *6 (S.D.N.Y. May 18, 2009) (dismissing warranty claim where the defect did not manifest until after the express warranty period had lapsed).

Ambrozic concedes he did not experience sound issues until “[o]ver a year following his initial purchase[.]” (FAC ¶ 136.) He thus has no breach of express warranty claim under Illinois

1 law. *Evitts v. DaimlerChrysler Motors Corp.*, 834 N.E.2d 942, 950 (Ill. App. 2005) (under
2 Illinois law “express warranties of limited duration cover only defects that become apparent
3 during the warranty period”).

4 LaBella alleges she first experienced sound issues “[j]ust over a year following her
5 purchase[.]” (FAC ¶ 187.) Absent alleged issues during the warranty period, she cannot state a
6 claim for breach of express warranty under Pennsylvania law. *Osness v. Lasko Prods., Inc.*, 868
7 F. Supp. 2d 402, 410-11 (E.D. Pa. 2012) (acknowledging general rule under Pennsylvania law
8 that “defects discovered after the term of the warranty are not actionable” and dismissing breach
9 of express warranty claim where plaintiff alleged defect that manifested after warranty period had
10 lapsed).

11 Nykerk does not allege when he first experienced any sound issues and instead only
12 claims to have contacted Apple about his sound issues more than two years after his purchase
13 date. (FAC ¶¶ 113, 123-25.) Because he does not allege experiencing any issues during the
14 warranty period, he cannot state a breach of express warranty claim under Florida law. *See Licul*
15 *v. Volkswagen Grp. of Am., Inc.*, No. 13-61686-CIV, 2013 WL 6328734, at *2 (S.D. Fla.
16 Dec. 5, 2013) (plaintiffs could not maintain express warranty claims under Florida law because
17 the express warranty expired prior to the manifestation of the claimed defect).

18 Rodgers alleges she first experienced sound issues more than two years after her purchase
19 date and more than a year after her Limited Warranty period had lapsed. (FAC ¶¶ 172, 177.)
20 Rodgers’ breach of express warranty thus fails under Ohio law. *See Caterpillar Fin. Servs. Corp.*
21 *v. Harold Tatman & Son’s Enters., Inc.*, 50 N.E.3d 955, 961-62 (Ohio Ct. App. 2015) (finding
22 under Ohio law that no breach of express warranty occurred where plaintiffs did not allege
23 experiencing any issues with product until after warranty period had lapsed).

24 Schaefer did not experience any sound issues until “about one year after his purchase.”
25 (FAC ¶ 106.) Notably, Schaefer avoids alleging the actual date when he experienced sound
26 issues, and thus fails to allege facts establishing that he experienced such an issue within the
27 warranty period. He cannot state a claim for breach of express warranty under California law.
28 *See, e.g., Tabak v. Apple Inc.*, No. 19-cv-02455-JST, 2020 WL 9066153, at *11-12 (N.D. Cal.

Jan. 30, 2020) (dismissing express warranty claims for plaintiffs who did not experience any issues with devices during the one-year warranty period (citing *Daugherty v. Am Honda Motor Co.*, 144 Cal. App. 4th 824, 830-32 (2006)); *see also Davidson v. Apple Inc.*, No. 16-CV-04942-LHK, 2017 WL 976048, at *13 (N.D. Cal. Mar. 14, 2017) (same). Indeed, if a “[f]ailure of a product to last forever would become a ‘defect,’ a manufacturer would no longer be able to issue limited warranties, and product defect litigation would become as widespread as manufacturing itself.” *Long v. Hewlett-Packard Co.*, No. C 06-02816 JW, 2007 WL 2994812, at *4 (N.D. Cal. July 27, 2007) (citation omitted), *aff’d*, 316 F. App’x 585 (9th Cir. 2009).

Further, while Camacho and Pawson each allege experiencing sound issues during the Limited Warranty period, they both concede they received free replacements from Apple that they used for several years beyond their initial purchase date. Camacho claims he first experienced sound issues “three months” after his purchase in March 2020, yet he continued to use his AirPods Pro 1 for more than two years until they were replaced for free by Apple in August 2022, and he then used his free replacement AirPods for another two years until November 2024. (FAC ¶¶ 80, 88, 92-94.) Similarly, Pawson alleges he experienced sound issues with his right bud during the one-year warranty period, and Apple provided him with a free replacement when he reported the issue. (*Id.* ¶¶ 200-01.) Pawson further alleges he received another free bud after he experienced sound issues with his left bud more than a year later. (*Id.* ¶ 202.) Because Camacho and Pawson each concede that they received free replacements under warranty, which they continued to use for years thereafter, they cannot state a claim for breach of express warranty. *See Tabak*, 2020 WL 9066153, at *13 (dismissing breach of warranty claim for plaintiff who received replacement device under warranty); *Long*, 2007 WL 2994812, at *5 (allegation that a replacement received during warranty subsequently malfunctioned outside the warranty period immaterial to breach of express warranty claim); *see also Golden Spread Coop., Inc. v. Emerson Process Mgmt. Power & Water Sols., Inc.*, 360 F. Supp. 3d 494, 511 (N.D. Tex. 2019) (finding no breach of express warranty where defendant fulfilled its obligations under limited warranty by repairing allegedly defective software), *aff’d*, 954 F.3d 804 (5th Cir. 2020); *Becker v. Cont’l Motors, Inc.*, 709 F. App’x. 263, 267-69 (5th Cir. 2017) (holding that defendant

1 did not breach express warranty where plaintiff failed to show that defendant failed to repair or
2 replace allegedly defective product under warranty).

3 **3. Rodgers' Express Warranty Claim Based on Apple's Advertising** 4 **Further Fails for Lack of Exposure and Reliance**

5 Plaintiff Rodgers' attempt to assert "express warranty" claims based on Apple's
6 advertisements further fails because she cannot show that the purported "express [advertising]
7 warranty" was "part of the basis of the bargain" for her purchase. *McKinney v. Bayer Corp.*, 744
8 F. Supp. 2d 733, 753 (N.D. Ohio 2010). To make this showing, Rodgers must plausibly allege
9 that she relied on the alleged advertising "express warranty." *Id.* at 754 (noting that a warranty
10 "is the basis of the bargain if it has been relied upon as one of the inducements for purchasing the
11 product") (citation omitted); *see also Nat'l Mulch & Seed, Inc. v. Rexius Forest By-Products, Inc.*,
12 No. 2:02-cv-1288, 2007 WL 894833, at *16 (S.D. Ohio, Mar. 22, 2007) (determining whether a
13 representation is "part of the basis of the bargain" requires evaluating "the reliance placed on the
14 seller's statement by the buyer"). Rodgers, however, does not allege she was even *exposed* to any
15 Apple advertisements concerning the AirPods Pro 1 before she made her purchase, much less that
16 she relied on any Apple statements or reviewed the terms of the Limited Warranty. Rodgers'
17 breach of express warranty claim based on Apple's advertisements fails for lack of exposure and
18 reliance.

19 **4. Plaintiffs' Implied Warranty Claims Fail as a Matter of Law**

20 Plaintiffs' claim for breach of the implied warranty of merchantability fails because, by
21 Plaintiffs' own allegations, they either used their AirPods Pro 1 devices for *years* before they
22 purportedly experienced "sound issues," or they received replacements from Apple that they
23 continued to use *years* after their original purchase.² To state a claim for breach of the implied
24 warranty of merchantability, Plaintiffs must show that the device lacked "the most basic degree of
25 fitness for ordinary use." *Gagetta v. Walmart, Inc.*, 646 F. Supp. 3d 1164, 1178 (N.D. Cal.

26 ² While both Camacho and Pawson claim to have experienced sound issues within a year
27 of their purchase dates, they each concede they received free replacement AirPods Pro 1 from
28 Apple and that they used their replacement devices for several years beyond their original
purchase date, more than satisfying any alleged implied warranty obligation.

2022).³ Plaintiffs cannot make this showing given that they each used their device for years after purchase, for the duration of the Limited Warranty period and beyond. *See Tietsworth v. Sears*, 720 F. Supp. 2d 1123, 1142 (N.D. Cal. 2010) (dismissing breach of implied warranty of merchantability claim where because the plaintiff’s “allegations of continued use of the [m]achine throughout the one-year warranty period belie her claim that it failed to serve its ordinary purpose”); *Franco v. Ford Motor Co.*, 644 F. Supp. 3d 672, 683 (C.D. Cal. 2022) (dismissing implied warranty claims where plaintiffs failed to show that the alleged defect impaired their use of their vehicles). Indeed, seven of the nine plaintiffs here concede they had *no* issues with their AirPods Pro 1 during the Limited Warranty period. (FAC ¶¶ 143, 152 (Adair); ¶ 136 (Ambrozic); ¶¶ 159, 167 (Kadyrov); ¶ 187 (LaBella); ¶¶ 113, 123-25 (Nykerk); ¶¶ 172, 177 (Rodgers); ¶ 106 (Schaefer).) Further, the two remaining Plaintiffs—Camacho and Pawson—each conceded that they received free replacement AirPods Pro 1 that they used for several years beyond their initial purchase date. (*Id.* ¶¶ 191, 200-03, 205 (Pawson); ¶¶ 80, 88-89, 92-94 (Camacho).)

Further, while Plaintiffs seek to assert claims for breach of the implied warranty of fitness for a particular purpose, Plaintiffs’ only allegations as to any “particular purpose” for which they purchased their AirPods Pro 1 is that they intended to use the device’s “noise cancelling functionality.” (*See, e.g.*, FAC ¶ 251.) But to state a claim for breach of the implied warranty of fitness for a particular purpose, Plaintiffs must identify a “particular purpose” that is *different from* the AirPods Pro 1’s “ordinary purpose” as noise-cancelling headphones. *See Am. Suzuki Motor Corp. v. Superior Ct.*, 37 Cal. App. 4th 1291, 1295 n.2 (1995) (“A particular purpose

³ Plaintiffs must also make this showing for their breach of implied warranty claims pled under Florida, Illinois, New York, Ohio, Pennsylvania, and Texas law. *Fineman v. Ferragamo USA Inc.*, 672 F. Supp. 3d 1302, 1308 (S.D. Fla. 2023) (under Florida law, merchantability only requires that goods “*satisfy a minimum level of quality*”) (citation omitted), *appeal dismissed* No. 23-11987-A, 2023 WL 5939033 (11th Cir. July 19, 2023); *Rudy v. D.F. Stauffer Biscuit Co.*, 666 F. Supp. 3d 706, 721-22 (N.D. Ill. 2023) (same requirement under Illinois law); *Duncan v. Kahala Franchising, L.L.C.*, 732 F. Supp. 3d 255, 268 (E.D.N.Y. 2024) (same requirement under New York law); *Risner v. Regal Marine Indus., Inc.*, 8 F. Supp. 3d 959, 993 (S.D. Ohio 2014) (noting under Ohio law, merchantability requires that goods be “of fair average quality”); *Osness*, 868 F. Supp. 2d at 414 (under Pennsylvania law, merchantability requires only that goods be of “reasonable quality”); *GMC v. Brewer*, 966 S.W.2d 56, 57 (Tex. 1998) (under Texas law, breach of implied warranty of merchantability requires showing that goods “lack of something necessary for adequacy”) (citation omitted).

differs from the ordinary purpose for which the goods are used in that it *envisages a specific use by the buyer which is peculiar to the nature of his business* [.])” (emphasis added, citation omitted). Because they cannot do so here, their claims fail. *See Smith v. LG Elecs. U.S.A., Inc.*, No. C 13-4361 PJH, 2014 WL 989742, at *8 (N.D. Cal. Mar. 11, 2014) (dismissing claim for breach of implied warranty of particular purpose where plaintiff’s purchase of washing machines based on their claimed “high efficiency” did not constitute a “particular purpose,” as it still pertained to “ordinary purpose” of washing clothes); *Royal Typewriter Co. v. Xerographic Supplies Corp.*, 719 F.2d 1092, 1100 (11th Cir. 1983) (finding no breach of implied warranty of a particular purpose because plaintiffs failed to show their use of the product differed from the “ordinary purpose” for which the product was sold).

5. Camacho Cannot State a Claim Under the Song-Beverly Consumer Warranty Act

Camacho’s claim under the Song Beverly Consumer Warranty Act fails because he did not purchase his AirPods Pro 1 in California, which is required by the plain text of the statute. *See* Cal. Civ. Code § 1792 (“Unless disclaimed in the manner prescribed by this chapter, every sale of consumer goods that are sold *at retail in this state* shall be accompanied by the manufacturer’s and the retail seller’s implied warranty that the goods are merchantable.”) (emphasis added). While Camacho is a California resident, he admits that he purchased his AirPods Pro 1 while residing in Illinois. (FAC ¶ 80.) Camacho’s Song-Beverly claim therefore fails as a matter of law. *See In re Nexus 6P Prods. Liab. Litig.*, 293 F. Supp. 3d 888, 926 (N.D. Cal. 2018) (dismissing Song-Beverly claims where plaintiffs failed to allege they purchased their phones in California because “[t]he protections of the Song-Beverly Act extend only to ‘sale[s] of consumer goods that are sold at retail in this state [California]’” (quoting Cal. Civ. Code § 1792)); *Woo v. Am. Honda Motor, Co.*, 462 F. Supp. 3d 1009, 1019 (N.D. Cal. 2020) (dismissing Song-Beverly claims asserted by plaintiffs who purchased vehicles outside of California).

B. Plaintiffs' Consumer Protection Claims Fail as a Matter of Law on Multiple Grounds

1. Labella and Rodgers' Consumer Protection Claims Fail to Satisfy Rule 9(b)'s Particularity Requirements

Plaintiffs' consumer protection claims are unequivocally grounded in fraud; they are premised on the allegation that Apple either misrepresented or concealed facts pertaining to sound issues with the AirPods Pro 1. (*See, e.g.*, FAC ¶ 6 (alleging Apple "concealed the sound issues it knew about from consumers"); ¶¶ 460, 500 (alleging that Apple "knowingly and fraudulently misrepresent[ed] the sound quality and listening experience that the AirPods Pro Gen 1 would provide consumers[.]") Plaintiffs must therefore meet the heightened pleading requirements of Rule 9(b), which requires that they plead the "who, what, when, where, and how" of the alleged misrepresentation or omission, as well as "what is false or misleading about [the purportedly fraudulent] statement, and why it is false." *See Yastrab v. Apple*, 173 F. Supp. 3d 972, 978 (N.D. Cal. 2016); *Graham v. Wells Fargo Bank, N.A.*, No. 3:15-cv-04220-JD, 2017 WL 86013, at *4 (N.D. Cal. Jan. 10, 2017) (the "'fraudulent' and 'unfair' prongs of the UCL . . . are subject to Rule 9(b)'s heightened pleading standards"); *Shields v. Alere Home Monitoring, Inc.*, No. C15-2580 CRB, 2015 WL 7272672, at *6 (N.D. Cal. Nov. 18, 2015) (claims grounded in fraud where plaintiff alleged that defendant misrepresented information about its product and concealed knowledge of product defects). Further, because Rule 9(b)'s heightened pleading requirement is procedural, it applies "irrespective of the source of subject matter jurisdiction, and irrespective of whether the substantive law at issue is state or federal." *In re Premera Blue Cross Customer Data Sec. Breach Litig.*, 198 F. Supp. 3d 1183, 1192 (D. Or. 2016).

Plaintiffs LaBella and Rodgers do not come close to meeting this heightened pleading requirement. Plaintiff LaBella makes at best vague allegations that she saw an Apple "commercial" that "tout[ed]" the AirPods Pro 1's "noise cancelling features and ability to provide users with high-quality audio." (FAC ¶ 183.) But LaBella provides no detail whatsoever about where or when she saw the "commercial," or even on what medium. Rodgers alleges even less. She does not allege she saw *any* Apple advertisement or other representation concerning AirPods Pro 1 before her purchase. (*Id.* ¶¶ 171-80.) She has failed to plead *any* facts, let alone with the

requisite specificity, as to what statement she saw or read that contained an alleged omission, as well as when or where she saw such a statement. LaBella and Rodgers’ consumer protection claims fail for lack of specificity and must be dismissed. *See Yastrab*, 173 F. Supp. 3d at 978 (dismissing plaintiffs’ consumer protection claims for failure to meet Rule 9(b)’s specificity requirement where plaintiffs referenced only vague statements on Apple’s website and its advertisements); *see also Davidson*, 2017 WL 976048, at *8-9 (dismissing fraud claims premised on an alleged omission where plaintiffs did not identify the specifics of the Apple advertisement that contained an alleged omission).

2. Plaintiffs’ Consumer Protection Claims Based on Alleged Apple Omissions Fail Because They Cannot Show a Duty to Disclose

To the extent Plaintiffs Adair, Ambrozic, Kadyrov, LaBella, Nykerk, Rodgers, and Schaefer seek to assert omissions-based consumer protection claims, those claims fail because they cannot show that Apple had a duty to disclose any purported sound issues with their AirPods Pro 1 that they claim occurred only after the Limited Warranty period expired. (*See* FAC ¶¶ 143, 152 (Adair); ¶ 136 (Ambrozic); ¶¶ 159, 167 (Kadyrov); ¶ 187 (LaBella); ¶¶ 113, 123-25 (Nykerk); ¶ 106 (Schaefer); ¶¶ 172, 177-79 (Rodgers). Where an alleged defect manifests only after the warranty period has expired, a defendant’s duty to disclose extends only if the defect poses an unreasonable safety risk. *See Taleshpour v. Apple Inc.*, 549 F. Supp. 3d 1033, 1044-45 (N.D. Cal. 2021), *aff’d*, No. 21-16282, 2022 WL 1577802 (9th Cir. May 19, 2022); *see also Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1141-42 (9th Cir. 2012); *Perkins v. DaimlerChrysler Corp.*, 890 A.2d 997, 1004 (N.J. Super. Ct. App. Div. 2006) (finding no liability under Pennsylvania law for failure to disclose defect that manifested after warranty period lapsed where “it was not alleged that the . . . failure . . . represented a danger to others”).

Plaintiffs here do not even attempt to plead such a safety risk, and for good reason: none exists. Without any allegation of a safety risk, Plaintiffs Adair, Ambrozic, Kadyrov, LaBella, Nykerk, Rodgers, and Schaefer’s omissions claims fail and should be dismissed. Further, because Plaintiff Rodgers alleges *only* omissions-based claims, her consumer protection claims should be dismissed in their entirety.

3. Plaintiff Pawson's Consumer Protection Claim Is Time Barred

Plaintiffs Pawson's consumer protection claim is independently deficient because it is untimely. Pawson's claim under the Texas Deceptive Trade Practices-Consumer Protection Act ("DTCPA") is subject to a two-year statute of limitation. *See Holmes v. P.K. Pipe & Tubing, Inc.*, 856 S.W.2d 530, 537 (Tex. App. 1993). This two-year statute begins to run "after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of the false, misleading, or deceptive act or practice." *Id.* By his own allegations, Pawson discovered his claims no later than November 2020 when he first experienced sound issues with his AirPods Pro 1 (FAC ¶¶ 191, 200), yet waited four years, until November 2024 to file suit.⁴

Pawson cannot rely on either the delayed discovery rule or the doctrine of fraudulent concealment to salvage his untimely claim. To invoke the delayed discovery rule, Pawson must show that the "nature of [his] injury" was both "inherently undiscoverable" and "objectively verifiable." *LaTouche*, 606 S.W.3d at 883. "An injury is not inherently undiscoverable when it could be discovered through the exercise of reasonable diligence." *Id.* Similarly, fraudulent concealment tolls the statute of limitations only until "a party learns of facts . . . which would cause a reasonably prudent person to make inquiry, which, if pursued, would lead to discovery of the concealed cause of action." *Lozano v. Baylor Univ.*, 408 F. Supp. 3d 861, 900 (W.D. Tex. 2019) (citations omitted); *see also Coody v. A.H. Robins Co.*, 696 S.W.2d 154, 156 (Tex. App. 1985) (affirming dismissal of claim as untimely, noting "[t]he discovery rule speaks only of discovery of the injury. It does not operate to toll the running of the limitation period until such time as plaintiff discovers all of the elements of a cause of action"). Neither save Pawson's DTCPA claim. Here, Pawson claims that he first experienced sound issues in November 2020, which prompted him to conduct online "research" into his issues, and he claims he then later

⁴ The Court can properly determine the timeliness of Pawson's DTCPA as a matter of law. "[I]f reasonable minds could not differ about the conclusion to be drawn from the facts, the commencement of the limitations period may be determined as a matter of law." *LaTouche v. Perry Homes, LLC*, 606 S.W.3d 878, 884 (Tex. App. 2020).

1 experienced sound issues for the second time in January 2021. (FAC ¶¶ 191, 200-02.)
 2 Accordingly, Pawson was on notice of his claim as early as November 2020 and by no later than
 3 January 2021, and he cannot claim any such facts were “undiscoverable” to him. *LaTouche*, 606
 4 S.W.3d at 883; *see also Bettles v. Toyota Motor Corp.*, 645 F. Supp. 3d 978, 984-85 (C.D. Cal.
 5 2022) (holding plaintiff could not invoke delayed discovery rule where plaintiff’s own complaint
 6 cited “numerous sources of information concerning the defect that would have been revealed by
 7 such a search”). Pawson’s DTCPA claim is untimely and should be dismissed.

8 **C. Plaintiffs’ Unjust Enrichment Claim Fails as a Matter of Law**

9 Plaintiffs cannot state an unjust enrichment claim because the parties have an express
 10 contract that governs Plaintiffs’ rights as to whether their AirPods Pro 1 performed as warranted.
 11 *See Cal. Med. Ass’n, Inc. v. Aetna U.S. Healthcare of Cal., Inc.*, 94 Cal. App. 4th 151, 153 (2001)
 12 (“[a]s a matter of law, a quasi-contract action for unjust enrichment does not lie where express
 13 binding agreements exist and define the parties’ rights”).⁵

14 As set forth above, the Limited Warranty governs Plaintiffs’ rights as to their purported
 15 issues with their devices, *supra* IV (A)(1). Consequently, Plaintiffs’ unjust enrichment claim
 16 lacks any legal basis as it cannot cover conduct governed by a valid contract. But even if
 17 Plaintiffs had a legal basis to assert a claim for unjust enrichment, that claim would still
 18 independently fail because Plaintiffs cannot plausibly allege that Apple retained any benefit at
 19 their expense where each Plaintiff concedes they used their AirPods Pro 1 for years beyond their
 20 purchase dates. *See Peterson v. Celco P’Ship*, 164 Cal. App. 4th 1583, 1593 (2008) (“There is
 21 no equitable reason for invoking restitution when the plaintiff gets the exchange which he
 22
 23

24
 25 ⁵ This limiting principle also applies under Florida, Illinois, New York, Ohio,
 26 Pennsylvania, and Texas law. *See Diamond “S” Dev. Corp. v. Mercantile Bank*, 989 So. 2d 696
 27 (Fla. Dist. Ct. App. 2008) (Florida law); *Cohen v. Am. Sec. Ins. Co.*, 735 F.3d 601, 615 (7th Cir.
 28 2013) (Illinois law); *Cox v. NAP Constr. Co.*, 10 N.Y.3d 592, 607 (2008) (New York law); *Cook*
v. Ohio Nat’l Life Ins. Co., 961 F.3d 850, 858 (6th Cir. 2020) (Ohio law); *Liberty Mut. Ins. Co. v.*
Gemma, 301 F. Supp. 3d 523, 541 (W.D. Pa. 2018) (Pennsylvania law); *Reveille Trucking, Inc. v.*
Lear Corp., No. 4:14-CV-511, 2017 WL 661521, at *13 (S.D. Tex. Feb. 17, 2017) (Texas law).

1 expected.”).⁶

2 **D. Plaintiffs Lack Article III Standing to Pursue Injunctive Relief Because They**
 3 **Do Not Allege Any Likelihood of Future Injury**

4 Plaintiffs fail to satisfy the requirements for Article III standing to seek injunctive relief.
 5 Plaintiffs do not allege that they intend to purchase another pair of AirPods Pro 1 in the future and
 6 accordingly, they fail to allege any likelihood of future injury, as required for standing for
 7 injunctive relief claims. *See Davidson*, 2017 WL 976048, at *6 (finding plaintiffs lacked Article
 8 III standing for injunctive relief where plaintiffs failed to “allege that they intend to purchase
 9 another iPhone 6 or 6 Plus in the future”). Plaintiffs do not allege that Apple even continues to
 10 sell the AirPods Pro 1 (it does not), and they concede that any purported problem was “fix[ed]”
 11 with the “new generation” of AirPods Pro (FAC ¶ 51), thus making clear there is no “real and
 12 immediate threat of repeated injury” here that could be addressed via injunctive relief. *See, e.g.,*
 13 *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007); *Werdebaugh v. Blue*
 14 *Diamond Growers*, No. 12-CV-2724-LHK, 2014 WL 2191901, at *9 (N.D. Cal. May 23, 2014)
 15 (no Article III standing for injunctive relief because “there is no likelihood of future injury to
 16 Plaintiff that is redressable through injunctive relief” (class decertified, 2014 WL 7148923 (N.D.
 17 Cal. Dec. 15, 2014))).

18 **E. Plaintiffs’ Conclusory Alternative Claims Under the Consumer Protection**
 19 **Statutes and Warranty Laws of Other States Fail as a Matter of Law**

20 In an “everything but the kitchen sink” effort that falls woefully short of the applicable
 21 pleading requirements, Plaintiffs plead in the alternative that (i) Apple violated the “consumer
 22 protection acts of 50 states,” and (ii) Apple purportedly breached express and implied warranties
 23 under the “warranty laws of 50 states.” (FAC ¶¶ 226-55.) Such a “terse recitation of the law” is
 24 plainly insufficient to meet the heightened pleading requirements of Rule 9(b). *See Ward v.*

25 ⁶ The same is true under Florida, Illinois, New York, Ohio, Pennsylvania, and Texas law.
 26 *See, e.g., Anderson v. Talentsy, Inc.*, 599 F. Supp. 3d 1207, 1214 (M.D. Fla. 2022) (Florida law);
 27 *Banco Panamericano, Inc. v. City of Peoria*, 880 F.3d 329, 333 (7th Cir. 2018) (Illinois law); *In*
 28 *re Nanobeak Biotech Inc.*, 656 B.R. 350, 368 (Bankr. S.D.N.Y. 2024) (New York law); *Cook*,
 961 F.3d at 585 (Ohio law); *Liberty Mut.*, 301 F. Supp. 3d at 541 (Pennsylvania law); *Reveille*
Trucking, 2017 WL 661521, at *13 (Texas law).

1 *Mitchell*, No. 12-cv-3932 NC, 2013 WL 1758840, at *9 (N.D. Cal. Apr. 24, 2013). Indeed,
2 “[m]erely naming the statutes is insufficient” even under the Rule 8 pleading standards. *See*
3 *Marcus v. Apple Inc.*, No. C 14-03824 WHA, 2015 WL 151489, at *4 (N.D. Cal. Jan. 8, 2015).
4 Plaintiffs do not allege the elements required to establish a violation of these statutes or laws,
5 much less facts to establish that each element under each variation of the law has been satisfied.
6 Accordingly, these claims should be dismissed.

7 **V. CONCLUSION**

8 For the foregoing reasons, Apple respectfully requests that the Court grant Apple’s motion
9 to dismiss.

10 Dated: March 28, 2025

MORRISON & FOERSTER LLP

11
12
13 By: /s/ Claudia M. Vetesi
CLAUDIA M. VETESI

14 Attorneys for Defendant
15 APPLE INC.
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